IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 1156 OF 2003

IN

SUMMARY SUIT NO. 3613 OF 2003

Bombay Chemicals P.Ltd .....Plffs.
vs.
A.L. Kasture .....Defnds.

Ms. Mamta Sadh a/w. T.N. Tripathi, advocate for the plaintiffs.
Mr.M.D. Angal, advocate for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 6th September, 2005.

P.C. :.

1. The present suit is filed inrespect of the goods sold and delivered under the agreement which is at Ex.A to the plaint. Clause 8 of the agreement provides the mode of payment as under :

"8. MODE OF PAYMENT: All orders are

accepted for execution when they are accompanied by demand draft for full value.

All orders placed by your with us for your requirement should be for minimum 100 cases at a time (each case containing 60 cartons and each carton containing 5 double coils and one metal stand). orders from stockists in cities as well as Towns should b e booked for minimum 50 cases."

2. Under the terms and conditions of the agreement the defendant was empowered to purchase the goods from the plaintiff and sell it and distribute it to the third party subject to his liability of making payment. It is the case of the plaintiff that inrespect of the five invoices which are subject matter of the present suit the defendant has not made payments. The defendant is contending that the goods covered under the said invoices are not received. Learned counsel for the plaintiffs has produced the proof of the delivery. The same is taken on record and marked ‘X’ for identification. Learned counsel for the plaintiff has drawn my attention that infact in a letter dated 20.9.2001 the defendant had made complaints

of defective delivery of goods. In the aforesaid circumstances I find that the case of non-delivery of the goods by the plaintiff to the defendant is without any merits.

3. However with a view to give opportunity to the defendants to defend the suit I directed the defendants to deposit in this court a sum of Rs.5.00 lacs within four weeks failing which the plaintiff will be entitled to the decree. The amount so deposited will be invested by the Prothonotary and Senior Master in fixed deposit of any nationalised bank for a period of three years and the same will be renewed from time to time till further orders.

4. If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four

weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

sd/-

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